

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE:	:	
	:	Chapter 13
CHRISTOPHER S. VITANZA,	:	Bankruptcy No. 01-
	:	15899
	:	Civil Action No. 02-0021
Debtor.	:	

MEMORANDUM

BUCKWALTER, J.

July 23, 2002

Appellant Christopher S. Vitanza (“the Debtor”) appeals an Order of the United States Bankruptcy Court for the Eastern District of Pennsylvania terminating the automatic stay imposed in connection with his Chapter 13 bankruptcy filing. Such relief was requested by Appellee 209-211 Chestnut Street Associates (“the Landlord” or “CSA”). For the reasons discussed below, the decision of the Bankruptcy Court is **REVERSED**. The case is **REMANDED** for proceedings not inconsistent with this Memorandum.

I. Factual and Procedural History

The Debtor is a principal of KMDA, a corporation that operates the Painted Parrot Café restaurant on Chestnut Street in Philadelphia, Pennsylvania. The Landlord is the owner of the building occupied by KMDA (the “Premises”).

In or about 1998, the Landlord alleged that KMDA defaulted on its lease for the Premises, and sued KMDA and the Debtor in the Court of Common Pleas for Philadelphia County (the “State Court Case”). The Debtor filed a Chapter 13 bankruptcy proceeding in the

United States Bankruptcy Court for the Eastern District of Pennsylvania, docketed at No. 98-19611 (the “First Bankruptcy Case”), and moved to assume the lease. The First Bankruptcy Case and the State Court Case were resolved through a lengthy agreement (the “Settlement Agreement”) between the Debtor, KMDA, the Landlord, and FDD, another corporate entity related to the Debtor. The Settlement Agreement superceded the lease in many material aspects. Pursuant to the Settlement Agreement, the Debtor was permitted to assume the lease. Additionally, judgment for possession of the Premises was entered in favor of the Landlord in the State Court Case. However, the Landlord agreed not to execute on the judgment unless certain new defaults of the lease or violations of the Settlement Agreement occurred. Furthermore, the Settlement Agreement established a detailed procedure through which the Landlord could seek to have an alleged breach certified in Bankruptcy Court, and through which it could seek a remedy. On February 25, 1999, the Bankruptcy Court approved the Settlement Agreement as an Order of that court. The First Bankruptcy Case was then dismissed on November 2, 2000 and closed on December 15, 2000.

Within a few months, the parties were embroiled in further landlord-tenant disputes. The Landlord allegedly issued notices of various defaults to the Debtor and KMDA. The Landlord then sought to execute on the judgment in the State Court Case by issuing writs of execution. In response, the Debtor filed a Petition to Stay Execution and Vacate the writs of possession. The Landlord alleged that, under the Settlement Agreement, the Debtor had no right to do so, because (1) he was in default and his leasehold rights had therefore terminated; and (2) he did not file a bond before opposing the Landlord’s exercise of its rights, as required by the Settlement Agreement. At least with regard to the bond issue, the Court of Common Pleas

agreed with the Landlord. The Debtor failed to post the bond. As a result, on April 16, 2001, the Court of Common Pleas dismissed the Debtor's Petition and vacated the stay of execution.

On April 18, 2001, with the writs of possession due to be enforced by the Debtor's eviction from the Premises, the Debtor filed the instant Chapter 13 bankruptcy action in the United States Bankruptcy Court for the Eastern District of Pennsylvania, docketed at No. 01-15899 (the "Second Bankruptcy Case"). That filing operated as an automatic stay of the eviction proceedings under 11 U.S.C. § 362. The Landlord filed a motion seeking relief from the automatic stay to proceed with the attempted eviction. On May 30, 2001, the Debtor moved to assume the lease. On July 17, 2001, a hearing was held on both motions.

At the hearing and in written submissions preceding it, the Landlord first argued that its motion should be granted because it followed the proper procedure to enforce its rights under the Settlement Agreement, and the Debtor had no right to frustrate his eviction in Bankruptcy Court with a new filing after the earlier case was closed. The Debtor countered that it was the *Landlord* who had not followed the Settlement Agreement's procedures by attempting to execute on the State Court Case judgment without seeking certification of a default in Bankruptcy Court. The Debtor further contended that, while the Settlement Agreement did not explicitly address a situation where a new bankruptcy action was filed by the Debtor, his procedural right to contest allegations of default was preserved in any case.

Second, the Landlord argued that principles of *res judicata* and collateral estoppel arising from the April 16, 2001 Court of Common Pleas Order and the earlier entry of judgment terminated the Debtor's leasehold rights and compelled the Bankruptcy Court to grant its motion without the need to present evidence of default. The Debtor disagreed, arguing that the Order

was not a final decision on the merits as to default, and therefore had no preclusive effect. Third, the Landlord argued that a default of the lease or Settlement Agreement had in fact occurred, and the parties presented some evidence on the question of whether a default had taken place.

In an Order dated November 30, 2001, the Bankruptcy Court granted the Landlord's motion on a narrow, threshold issue. The Bankruptcy Court found that, under the unambiguous terms of the Settlement Agreement, "if a new bankruptcy was filed, the debtor ... agree[d] to relief from [the] stay to permit the Landlord to pursue its remedies outside of Bankruptcy Court." The court recognized that "[t]he resolution of disputes by agreement of the parties is an important component of the bankruptcy process and is to be facilitated when possible and otherwise appropriate," and that the stay waiver was "given by the debtor in the context of a prior bankruptcy and approved by Bankruptcy Court order." As a result, the court exercised its discretion to terminate the automatic stay under 11 U.S.C. § 362 (d).

The Debtor moved for a stay of eviction from the Premises pending appeal of the Bankruptcy Court's ruling. After a hearing, on December 21, 2001, the Bankruptcy Court granted the stay.

II. Jurisdiction and Standard of Review

This Court has jurisdiction over appeals from final judgments, orders, and decrees from the Bankruptcy Court pursuant to 28 U.S.C. § 158(a) and Federal Bankruptcy Rule of Procedure 8001. In reviewing a bankruptcy court's determinations, this Court reviews its legal conclusions *de novo*, its factual findings for clear error, and its exercise of discretion for abuse thereof. See In re Trans World Airlines, Inc., 145 F.3d 124, 131 (3d Cir. 1998).

III. Discussion

The basis upon which the Bankruptcy Court exercised its discretion to terminate the Second Bankruptcy Case's automatic stay was its conclusion that under section 15 of the Settlement Agreement, the Debtor unambiguously agreed to waive its rights to the automatic stay and resolve alleged defaults in state court.¹ However, it appears that court misread that portion of the Settlement Agreement. It reads:

KMDA and FDD each agree that if a petition for relief under Title 11 of the United States Code is filed naming either or both of them as a debtor, they will stipulate that cause exists to modify the automatic stay of 11 U.S.C. § 362 (a) to allow CSA to exercise its rights and remedies under this Agreement, including but not limited to seeking relief and execution in any state or federal court, including but not limited to the Bankruptcy Court.

By its explicit terms, this paragraph applies only to KMDA and FDD, rather than the Debtor. In fact, nowhere in the Settlement Agreement is it unambiguously clear that, if the Debtor himself filed a new bankruptcy proceeding (such as the Second Bankruptcy Case), it agreed to modify or terminate the resulting automatic stay.

1. In a footnote in its Memorandum, the Bankruptcy Court also states that “[e]ven had there been no stay-waiver provision in the Settlement Agreement, the policy considerations discussed above are sufficient, under these circumstances, to constitute ‘cause,’ warranting relief to the Landlord under § 362 (d)(1).” However, the only policy considerations discussed in the Memorandum concern the favorableness of resolution of disputes by agreement of the parties. These policy considerations are only relevant if the Debtor *agreed* to waive the stay in the Second Bankruptcy Case, which it did not – at least not unambiguously in paragraph 15, as the court held. As a result, there is no basis for these policy considerations to constitute “cause” under § 362 (d)(1). Furthermore, the Bankruptcy Court does not set forth findings as to what other circumstances in this case would contribute to a finding of “cause.” This Court therefore construes the Bankruptcy Court’s decision as turning on its conclusion that the Debtor unambiguously agreed to waive the stay.

A court's interpretation of a settlement agreement, as well as any underlying factual findings, is subject to review for clear error. See Coltec Indus., Inc. v. Hobgood, 280 F.3d 262, 269 (3d Cir. 2002). In contrast, construction of an agreement, including the determination of whether a provision is clear or ambiguous, is a question of law subject to plenary review. See Bill Gray Enters., Inc. Employee Health & Welfare Plan v. Gourley, 248 F.3d 206, 218 (3d Cir. 2001). Because the Debtor did not agree to permit the Landlord to seek a stay in the Second Bankruptcy Case pursuant to the text of paragraph 15 of the Settlement Agreement, the Bankruptcy Court's ruling that the Debtor agreed to do so pursuant to that provision is a clear error of fact. Furthermore, that court's decision that the Settlement Agreement is unambiguous on the matter is an error of law.

A decision to terminate the stay under § 362 (d) is made at the discretion of the Bankruptcy Court. In re Colonial Ctr., Inc., 156 B.R. 452, 459 (Bankr. E.D. Pa. 1993). In granting the Landlord's motion, that court abused its discretion because it based its decision upon a clearly erroneous finding of fact and an error of law. See Marco v. Accent Pub. Co., 969 F.2d 1547, 1548 (3d Cir. 1992).

The Bankruptcy Court decided this matter on a threshold issue.² In its Memorandum, it did not make findings of fact or conclusions of law beyond those necessary to support its decision, and it described the evidentiary record as "limited." As a result, this Court will remand the case to the Bankruptcy Court for it to resolve the Landlord's motion on alternate grounds through proceedings not inconsistent with this Memorandum.

2. Again, to the extent that the court hinted at alternative grounds for its decision, see footnote 1, it did not adequately set forth those grounds.

An appropriate Order follows.

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ORDER

AND NOW, this 23rd day of July 2002, Appellant's appeal is **GRANTED** and the November 30, 2001 decision of the Bankruptcy Court is **REVERSED**. The matter is **REMANDED** to that court for proceedings not inconsistent with this Memorandum.

BY THE COURT:

RONALD L. BUCKWALTER, J.